



## Terms and Conditions of Sale

These are the entire Terms and Conditions of Sale of all goods merchandise and services ("the goods") supplied by Taipan Pty Ltd (ABN 31 076 139 985) (referred to as "TAIPAN") to any person, firm or company placing an order with TAIPAN for the purchase of any goods ("the Customer"). Except as otherwise expressly agreed upon in writing between a duly authorised officer of TAIPAN and the Customer, these Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any Customer.

### GENERAL

1. No quotation by TAIPAN shall constitute an offer.

2. All orders placed with TAIPAN shall only be accepted subject to these Terms and Conditions. TAIPAN may at any time; and from time to time alter these Terms and Conditions of Sale and such altered Terms and Conditions of Sale shall apply after notification by TAIPAN to the Customer.

3. If a Customer cancels or alters any order or part order for special goods or standard goods with special materials at any time after TAIPAN has received the order then TAIPAN reserves the right to charge to the Customer the costs of any special goods or materials already acquired for the order together with the cost of any labour and tooling expended to the date of such cancellation or alterations.

4. Goods and Services Tax ("GST") or any other applicable tax or duty payable shall be paid by or reimbursed by the Customer to TAIPAN on demand and the Customer shall indemnify and keep indemnified TAIPAN in respect of all taxes and duties including GST arising out of any sale of goods or the subsequent use of goods after the sale to the Customer.

### PRICES

5. Prices are those referred to in any invoice issued by TAIPAN and/or arrangements current at the date of issue and shall be subject to change without notice.

6. Prices are quoted ex- stock from TAIPAN.

### TERMS OF PAYMENT

7. Unless otherwise stated in writing all prices are strictly 30 days from EOM. The granting of credit to a Customer shall be at the absolute discretion of TAIPAN and unless otherwise

demanded by TAIPAN the Customer shall make payment of all amounts payable within **Thirty (30) from End Month** of delivery.

8. Customers shall not be entitled to withhold payment of any account by reason of any account query, dispute or set off. The Customer agrees to pay TAIPAN Administration and Handling fees in respect of any copies of documents required or other processing involved in the conduct of the account and such fees will be charged to the Customer's account.

9. If the Customer fails to make payment in accordance with Clause 7, TAIPAN shall be entitled to:-

10. Require the payment of cash upon delivery of any further goods;

11. Charge an interest charge at the rate of fifteen percent (15%) per annum such interest charge to be computed from the due date for payment AND the parties agree that such interest charge is not a penalty but is a true measure of costs, fees & charges including debt collection costs and any other costs incurred by TAIPAN. Payments received from the Customer will be credited first against any interest charge and all such fees as shall be payable on demand;

12. Claim from the Customer all costs, expenses and charges incurred on any account whatsoever including but not limited to any action taken by TAIPAN to recover monies or goods due from the Customer including but not limited to any mercantile agent's costs and legal costs and disbursements on a solicitor-client basis; and

13. Cease any further deliveries to the Customer and to terminate any agreement in relation to goods that have not been delivered.

14. Customers having

overdue accounts will be precluded from participating in any special deals, discounts, bonus payments, redemptions, rebates, and all other incentive programs until their accounts are no longer overdue.

### DELIVERY

15. The Customer shall be responsible for the cost of any delivery made ex-TAIPAN store. If TAIPAN is requested to arrange for delivery of products beyond the store, the Customer shall pay the delivery charges stipulated by TAIPAN from time to time. TAIPAN shall in all cases be entitled to choose the method of transport.

16. Any date or time quoted for delivery is an estimate only and TAIPAN shall endeavor to effect delivery at the time or times required by the Customer but failure to do so shall not confer any right of cancellation or refusal of delivery on the Customer or render TAIPAN liable for any loss or damages directly or indirectly sustained by the Customer resultant thereof.

17. Obligation to accept or pay for goods because of any delay in delivery or any strike, lockout, unavailability of materials, accidents to machinery, differences with workmen, breakdowns, shortages of supplies or labour, fires, floods, storm or tempest, transport delays, acts of God, restrictions or intervention imposed by any laws, regulations, governments, or agencies thereof and any other cause beyond the control of TAIPAN or any other cause whatsoever.

18. "The TAIPAN obligation to deliver goods shall be discharged at the time of shipment of the goods from its premises to the customers nominated delivery destination

by way of its nominated or another reputable transport company or agent to the address appearing on the invoice.

The Customer shall unload the goods upon delivery. If the Customer is unable or unwilling to accept physical delivery of the goods when shipment has taken place, TAIPAN shall be entitled to charge a fee for any delay experienced or arrange for the storage of the goods at the risk and cost of the Customer including all transportation, storage, and other consequential costs. TAIPAN may, at its discretion, make and invoice partial deliveries and each partial delivery shall be a separate sale pursuant to these Terms and Conditions of Sale.

### INSPECTION

19. The Customer shall examine the goods immediately after delivery and TAIPAN shall not be liable for any error in delivery, shortage, defect, or damage, unless TAIPAN receives details in writing within seven (7) days of the date of delivery of the goods.

### PROPERTY AND RISK

20. Notwithstanding delivery of the goods or their installation, property in all and any goods shall remain with TAIPAN until the Customer has paid and discharged all indebtedness to TAIPAN on any account whatsoever, including all applicable GST and other taxes, levies, and duties. Any payment made by or on behalf of a Customer which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Customer's indebtedness and, in such an event the parties are to be restored to rights which each respectively would have had if the payment

#### ARCHERFIELD

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3 Mordaunt Cct  
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had not been made.

**21.** The risk in the goods shall pass to the Customer upon delivery to the Customer or his agent or to a transport company nominated by the Customer.

**22.** The Customer acknowledges that it is in possession of the goods solely as a bailee for TAIPAN until payment for all and any goods as defined in clause 7 has been made in full to TAIPAN and until such payment:

**23.** The Customer shall be fully responsible for any loss or damage to the goods whatsoever and howsoever caused following delivery; and

**24.** The Customer shall store the goods separately from its own goods and those of any other party and in a manner, which clearly identifies the goods, whether as separate chattels or as components, as the property of TAIPAN.

**25.** The Customer shall maintain records of goods owned by TAIPAN identifying them as TAIPAN property, of the persons to whom the goods are sold or disposed to and of the payments made by such persons for such goods. The Customer shall allow TAIPAN to inspect these records and the goods themselves on request.

**26.** The Customer hereby irrevocably grants to TAIPAN, its agents and servants, an unrestricted right and license, with notice to enter premises occupied by the Customer to identify and remove any of the goods the property of TAIPAN in accordance with the Terms and Conditions of Sale without in any way being liable to the Customer or any person claiming through the customer for trespass. TAIPAN shall have the right to sell or dispose of any such goods removed or otherwise in its sole discretion and shall not be liable for any loss occasioned thereby.

**27.** TAIPAN licenses the Customer to install the goods. If the goods are affixed to other materials, the goods shall still remain the sole and exclusive property of TAIPAN until payment as defined in clause 7 has been made in full to TAIPAN unless the other materials or part thereof are or

is the property of a party or parties other than the Customer in which case the totality thereof shall be deemed to be owned as tenants in common with such other party or parties in shares corresponding to the respective amounts paid or payable by the Customer in respect of such other party or parties.

**28.** The Customer shall be at liberty to agree to sell the goods (independently or affixed to other materials) subject to the condition that until payment has been made in accordance with clause 7, the Customer shall sell as an agent and bailee for TAIPAN and that the entire proceeds from the sale thereof shall be held in a separate account on trust for TAIPAN.

**29.** Where the Customer has not been paid for the goods sold in accordance with clause 19 the Customer hereby assigns the debt owing to itself (save for this provision) to TAIPAN absolutely and TAIPAN shall be entitled to demand payment of and collect the amount payable by the third party and the Customer hereby appoints TAIPAN as its agent for that purpose.

**30.** The right to on-sell, deal or otherwise dispose of the goods in the normal course of trade may be revoked at any time by TAIPAN and shall automatically cease if a Receiver is appointed over any of the assets on the undertaking of the Customer or if a winding up order is made against the Customer or if the Customer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or administration or calls a meeting of, or makes any arrangement or composition with, creditors or commits any act of bankruptcy or where the Customer is in default of any of its obligations to TAIPAN.

## WARRANTY

**31.** Subject to payment in

full being made as defined in clause 7, TAIPAN shall use its best endeavors to pass on to the Customer the benefit of any warranties or guarantees it receives in respect of goods or parts thereof supplied to the Customer. The benefits under the Taipan warranty are in addition to other rights and remedies under a law in relation to the goods & services.

## LIMITATION OF LIABILITY

**32.** These Terms and Conditions of Sale do not exclude, restrict, or modify the application of any provisions of any Commonwealth, State or Territorial Law which by law cannot be excluded, restricted or modified.

## 33. Sale to Non-Consumers

i) In the case of goods supplied by TAIPAN to a Customer who is not a "consumer" (as defined in the Trade Practices Act, 1974 as amended from time to time ("the Act"), if the goods do not correspond with the description of them on the invoice or are defective, then provided that the goods are preserved intact and made available for inspection by a representative of TAIPAN and are returned to TAIPAN

in the same order and condition as that in which they were delivered, TAIPAN shall at its option replace those goods or reimburse the Customer for the amount of the purchase price paid for them, but any claim in this respect must be made in writing within seven (7) days of the date of delivery of those goods.

ii) Should the Customer seek indemnity from TAIPAN in respect of any claim by a consumer on the Customer as a result of a breach of condition or warranty implied by the Act in a contract for the supply of goods by the Customer to that consumer, subparagraph (i) will not apply and in respect of goods that

are of a kind ordinarily acquired for personal, domestic or household use or consumption ("consumer goods") TAIPAN liability is limited to indemnifying the Customer in accordance with the Act, limited to a liability to pay to the Customer an amount equal to the cost of replacing the goods or the cost of obtaining equivalent goods or the cost of having the goods repaired, whichever is the lesser amount.

## 34. Sales to Consumers:

In the case of goods supplied by TAIPAN to a Customer who is a consumer, to the extent that the goods are not consumer goods or goods, the liability of TAIPAN to the Customer for breach of any warranty or condition (other than a warranty or condition implied by section 69 of the Act) or for breach of any duty of care shall in all cases be limited, at the option of TAIPAN, to any one or more of the replacement of the goods or the supply of equivalent goods, the repair of the goods or acquiring equivalent goods or the payment of the cost of having the product repaired.

**35.** Except for those conditions and warranties implied by the Act or other sale of goods or consumer protection legislation which may not be excluded, the Customer agrees that:

**36.** It has not relied on any inducement, representation or statement made by or on behalf of TAIPAN in purchasing the goods and there are no implied conditions or warranties herein and no collateral contracts in connection herewith (except such as may be in writing and signed by a duly authorized representative of TAIPAN); and

**37.** This clause sets out the entire liability of TAIPAN in respect of its liability under the Act or otherwise in respect of liabilities to a consumer for a breach of a condition or warranty with respect to the sale of goods or goods. In no circumstances, will TAIPAN incur any liability in respect of or arising out of or about any

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special, consequential, direct, or indirect loss, damage, harm, or injury suffered or incurred by the Customer.

#### FORCE MAJEURE

**38.** TAIPAN shall not be liable for any failure or delay in supply or delivery of the goods where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of TAIPAN including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

#### TERMINATION

**39.** If the Customer fails to comply with any of these Terms and Conditions or being a natural person or persons commits any act of bankruptcy, or being a corporation passes a resolution for winding up or liquidation (other than for the purposes of reorganisation or reconstruction) or administration or enters into any composition or arrangement with creditors or if a receiver or manager or administrator or controller is appointed for any property or assets of the Customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a liquidator or provisional liquidator or administrator is appointed, TAIPAN may in addition to exercising all or any of its rights against the Customer, suspend any further deliveries and immediately recover possession of any goods not paid for in accordance with these Terms and Conditions.

#### RETURNS

**40.** Other than in respect of TAIPAN obligations pursuant to clause 19 hereof TAIPAN shall not be liable to accept any returned goods but may in its absolute discretion accept the return of goods, if such goods shall only be accepted

for return with the prior written approval of a duly authorised representative of TAIPAN. Goods returned for credit pursuant to this clause will be subject to a handling and administration charge equivalent to 20% of the invoiced value of the returned goods. Return freight and other expenses will be paid for by the Customer and no returns of special goods will be accepted. Any returned goods must be accompanied with the relevant invoice numbers and/or a Goods Return Authority. No goods will be accepted for return after a period of 14 days from invoice date.

#### GOVERNING LAW

**41.** The Customer agrees that these Terms and Conditions of Sale shall be construed per the laws of the State or Territory as TAIPAN may in its sole discretion determine. Proceedings by either TAIPAN or the Customer may be instituted and/or continued in such State or Territory as TAIPAN may in its sole discretion determine. Failing such determination, the Customer consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of Queensland applying the laws of the State of Queensland.

#### SERVICE OF DOCUMENTS

**42.** The Customer agrees that service of any notices or Court documents may be affected by forwarding same by pre-paid post or facsimile to the last known address of the Customer.

#### STATEMENT OF DEBT

**43.** A certificate signed by a Director, Secretary, Financial Controller, or Credit Manager of TAIPAN shall be prima facie evidence of the amount of indebtedness of the Customer to TAIPAN at that time.

#### DEFAULT & CONSEQUENCE OF DEFAULT

**44.** Interest on overdue invoices shall accrue from the date when payment becomes

due daily until the date of payment at a rate of 15% per annum and shall accrue at such a rate after as well as before any judgment.

If the customer defaults in payment of any invoice when due, the customer shall indemnify TAIPAN from and against all TAIPAN costs and disbursements including on a solicitor and own client basis and in addition all TAIPAN nominee's costs of collection.

Without prejudice to any other remedies TAIPAN may have, if at any time the customer is in breach of any obligation (including those relating to payment), TAIPAN may suspend or terminate the supply of Services to the customer and any of its other obligations under the terms and conditions. TAIPAN will not be liable to the customer for any loss or damage the customer suffers because TAIPAN exercised its rights under this clause.

**45.** Any money payable to TAIPAN becomes overdue, or in TAIPAN's opinion the customer will be unable to meet its payments as they fall due; or

**46.** The customer becomes insolvent, convenes a meeting with its creditors or proposes or with creditors, or makes an assignment for the benefit of its creditors; or

**47.** A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the customer or any asset of the customer; then without prejudice to TAIPAN's other remedies at law

(a) TAIPAN shall be entitled to cancel all or any part of any order of the customer which remains unperformed in addition to and without prejudice to any other remedies; and

(b) All amounts owing to TAIPAN shall, whether or not due for payment, immediately become payable.

#### PRIVACY ACT 1988

**48.** The customer and/or the Guarantor/s agree for TAIPAN to obtain from a credit-reporting agency a credit report containing personal

credit information about the customer and Guarantor/s in relation to credit provided by TAIPAN.

The customer and/or the Guarantor/s agree that TAIPAN may exchange with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

(a) To assess an application by TAIPAN;

(b) To assess the credit worthiness of the customer and/or Guarantor/s.

The customer consents to TAIPAN being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1Xh) Privacy Act 1988).

The customer agrees that Personal Data provided may be used and retained by TAIPAN for the following purposes and for other purposes as shall be agreed between the customer and TAIPAN or required by law from time to time:

(a) Provision of Services & Goods;

(b) Marketing of Services and or Goods by TAIPAN, its agents or distributors in relation to the Services and Goods;

(c) Enabling the daily operation of the customer's account and/or the collection of amounts outstanding in the customer's account in relation to the Services and Goods.

TAIPAN may give information about the customer to a credit reporting agency for the following purposes:

(a) To obtain a consumer credit report about the customer; and or

(b) Allow the credit reporting agency to create or maintain a credit information file containing information about the customer

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**PERSONAL PROPERTIES, SECURITIES ACT 2009 (PPSA) 49.**

(a) The customer grants to TAIPAN a security interest to secure relevant obligations over any secured property or

collateral or accession which during transactions between the customer and TAIPAN may arise to the benefit of TAIPAN.

(b) The customer will at its cost and expense in every respect cooperate with and assist TAIPAN in perfecting any such security interest.

(c) Should the customer neglect or refuse to cooperate then it shall by its neglect or refusal constitute TAIPAN its attorney to perfect any such security interest.

(d) Upon release of the security interest the parties

will cooperate in providing the customer with a release.

(e) All work required to be undertaken by TAIPAN pursuant to clause 49 shall be at the cost and expense of the customer in every respect.

<b>Address</b>	11 Lear Jet Drive CABOOLTURE QLD 4510
<b>Phone</b>	07 5428 1211
<b>Fax</b>	07 5428 1311
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2/124 Beatty Rd  
Archerfield QLD 4108

**P: 07 3274 3433**  
F: 07 3274 3477  
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